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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 432

JOHN McGINNESS,

Petitioner,

vs.

CHARLES LUNA, PRESIDENT, BROTHERHOOD OF RAILROAD TRAINMEN, S. VANDER HEI, VICE-PRESIDENT, BROTHERHOOD OF RAILROAD TRAINMEN, and T. D. SHARKEY, LOUIS SMIRAGLIA, and W. G. ZIPPMAN, PRESIDENT, SECRETARY, and TREASURER, respectively, of LOCAL 225, BROTHERHOOD OF RAILROAD TRAINMEN,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT.

MARSHALL PATNER,
Attorney for Petitioner.

135 South La Salle Street,
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THE SMITHORP-WARREN PRINTING COMPANY, CHICAGO

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT.

John McGinness petitioner, plaintiff below, asks this Court to review an order of the Appellate Court of Illinois, First District. Petitioner had appealed an adverse judgment on a suit to enjoin a local union election until his right to run as a delegate to the union convention was determined. The Appellate Court affirmed, and the Illinois Supreme Court denied leave to appeal. Petitioner seeks to reverse the order of the Appellate Court to establish his right to injunctive relief under the Landrum-Griffin Act in a state court suit.

OPINIONS BELOW.

The opinion of the Illinois Appellate Court is not yet reported but is set out in full in Appendix A. The order, #38585, where the Illinois Supreme Court denied leave to appeal, is not reported.

THE RECORD.

A certified copy of the record below has been filed in this Court, along with nine copies of the Abstract of Proceedings, pursuant to Rule 21.

JURISDICTION.

This petition is presented for review of the judgment of the Appellate Court of Illinois, First District, dated January 3, 1964. That opinion became final on March 10, 1964, when a petition for rehearing was denied. The Illinois Supreme Court denied leave to appeal on May 27, 1964. This Court now has jurisdiction under 28 U. S. C. A. 1257(3).

QUESTIONS PRESENTED.

1. Whether the provisions of the Landrum-Griffin Act, 29 U. S. C. A. Supp. 411, et seq., apply to suits brought in state rather than federal courts.
2. Whether the provisions of Section 411 and Section 412 of that Act protect the rights of local union members to run for union office.

STATUTES.

Suit was filed to enjoin a local union election until petitioner's qualification to run for union office was determined. The Landrum-Griffin Act provides for such relief, 29 U. S. C. A. Supp. 401(a) and (b), 411(a)(1) and (a)(4), and 412.

STATEMENT.

This case is a companion case to *Calhoon* v. *Harvey*, certiorari granted, #17. The questions are whether the provisions of the "Bill of Rights" of the Landrum-Griffin Act protect the rights of union members to run for office, and in the present case, whether injunctive relief available under these provisions, is to be granted because of the Act in suits filed in state courts. When certiorari was granted in the *Calhoon* case, this Court invited the Attorney General to file a brief, 376 U. S. 910.

The president of an international union prevented petitioner, a local union member, from running for union office. Petitioner brought suit in a state court and asked to delay the election until his qualification to run for office was determined. The injunction was denied only on the ground that he had an appeal pending to the international union convention to be held sometime in the future. The Illinois Appellate Court affirmed[1], and the Illinois Supreme Court denied leave to appeal. The election in the local union was scheduled for November 13, 1963, and petitioner was duly nominated to run at that election for the office of delegate to the International convention. That convention was not to meet until more than four months after the election for that office. The election in the local union was uncontested unless petitioner ran and the delay of the election would not have caused any hardship to the local where petitioner had been nominated.[2]

The members of Local 225 of the Brotherhood of Rail-

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1. The opinion of the Illinois Appellate Court is set out in full in Appendix A to this petition.

2. These factual allegations are set out in petitioner's verified complaint and motion for temporary injunction, Abstract of Proceedings. Defendants' only response was to contend that petitioner had an appeal pending to the international union convention, Abstract, subsequently set for late September, 1964.

road Trainmen, an International Union, duly nominated petitioner to run as delegate to the Union International convention and for a local office for an election to be held on November 13, 1963. Petitioner had previously been President of Local 225 for 11 years. In the fall of 1961, the President of the International caused charges to be filed against petitioner. The members of Local 225 rejected the charges. However, under the direction of the President of the International, petitioner was tried, removed from office, and barred thereafter from holding any office whatsoever in the union. The charges against petitioner were that he had entertained an "illegal motion" while presiding at a local meeting[3] and that he had caused a subsequent meeting to be terminated when a local member attempted to file charges against him. There were no other charges and nothing in the union constitution permitted a trial on such charges except before the local members, and nowhere in that constitution was punishment of second class union membership without the right to run for office ever authorized.

Petitioner went through every International Union appellate step to vacate the order barring him from running for office. In October, 1963, the membership of Local 225 nominated petitioner, and at the time he was nominated he had an appeal pending to the International Convention to be held in the future. But his name was stricken from the ballot for the November election by the President of the International who interposed the 1961 order.[4]

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3. This motion, made by a member of the local, purportedly would have caused dues to be raised, by a hand vote, instead of by secret ballot. The movant, the person who gave a second to the motion, and local officers other than petitioner were also charged and tried by order of the international president. They were found guilty but their punishment was vacated, and the record of the proceeding against them was expunged. Only the proceedings against petitioner remain, Abstract of Record.

4. Each of these facts appear in petitioner's verified complaint and motion for temporary injunction set out in the Abstract of Record, filed with this petition.

Petitioner was denied the right to run for union office and there was no effective remedy available to him in the union. He filed a timely suit in a state court to enjoin the election and to establish his right to be on the ballot. The officials of the union never denied that the proceedings against petitioner were improper. They rested their objection to his action on the appeal pending to the union convention. In this case that was an illusory remedy. The Landrum-Griffin Act was enacted to protect the rights of individual union members against such arbitrary procedures. The provisions of the Act should be held to apply here.

REASONS FOR GRANTING THE WRIT.

1. This Court Should Grant Review to Resolve Conflicts in State and Federal Decisions on the Application of the Landrum-Griffin Act, a Federal Statute.

a. The Common Law Rule of Exhaustion of Remedies Has Been Modified by the Act.

In *Harvey* v. *Calhoon*, 2 Cir., 1963, 324 F. 2d 486, at p. 490, the Court of Appeals for the Second Circuit held that the provisions of Section 401(a)(4) and 411(e) are read with Section 102 of the Landrum-Griffin Act, 29 U. S. C. A. Supp., and give a union member the right to bring suit, and to enjoin a union election. He is entitled to the benefit of the Act if he qualifies under these provisions, and if there is no internal union remedy where relief would be available within four months of the acts where he was wronged. This Court has granted review in that case, *Calhoon* v. *Harvey*, No. 17, and has invited the Solicitor General to file a brief, 376 U. S. 910.

In *Parks* v. *International Brotherhood of Electrical Workers*, 4 Cir., 1963, 314 F. 2d 886 (cert. den. 372 U. S. 976), the Court of Appeals for the Fourth Circuit rejected the common law rule of exhaustion of internal remedies in

appropriate cases, and held that the rule was subject to the provisions of the Act (p. 925):

> "We agree, however, with the district court's conclusion that 'whatever construction is placed' on [Section 411(a)(4)], these suits are barred neither by common law exhaustion doctrine. When these suits were brought, all internal remedies available within four months of revocation, had been exhausted. To insist upon full exhaustion of remedies would be to impose an unreasonable delay in the adjudication of plaintiffs' rights and would result in irreparable harm to plaintiffs."

In the present case the election was scheduled for November 13. Petitioner's first opportunity to be nominated was in October, as set out in local union rules. On October 14 the president of the international union had plaintiff's name removed from the ballot and before the election plaintiff filed suit. He showed that no harm would come to the union if the election was postponed, but that if it went ahead, he would be irreparably harmed. The trial court denied the injunction, and the Illinois Appellate Court affirmed and held that plaintiff was bound by the common law exhaustion rule (App. A, p. 12). He was to wait until the union convention, even though he had been nominated to run as a delegate from his local to that convention, and even though the convention could give him no relief whatsoever on his eligibility to run in that election. The Illinois Court ignored the provisions of the Landrum-Griffin Act. The effect of the decision is to permit union rules to deny membership rights to union members without redress, the same situation that caused Congress to adopt the Landrum-Griffin Act, Proviso, Section 401.

b. To Meet the Purpose of Congress, the Provisions of the Act Must Apply Uniformly in Both State and Federal Courts.

The "Bill of Rights" provisions of the Landrum-Griffin Act, 29 U. S. C. A. Supp. 411, *et seq.*, were adopted to protect union democracy. The Proviso of the Act states that that Act was necessary to protect the rights of union members "to choose their representatives" (401(a)), because there had been "disregard of the rights of individual employees . . . as they relate to the activities of labor organizations" (401(b)). Therefore, Section 411(a)(4) protects the rights of an individual union member:

"to institute an action in any court"

to obtain relief provided in the Act, and specifically if there is no relief available within the union within the four month period. The state courts have failed to make this relief available, and have erroneously adhered to state exhaustion rules, even where exhaustion of internal remedies may mean no relief at all.

In *Mamula* v. *United Steelworkers of America*, 1964 (Penn.) 200 A. 2d 306, a member of a local union brought suit in a state court, and sought to be reinstated to local union office.[5] He had exhausted internal union remedies except for an appeal pending to the union convention, to be held some eight months later. He relied on Section 101(a) (4) of the Act, 29 U.S.C.A. Supp. 411(a) (4), and claimed that he was entitled to sue without waiting for the union convention. The majority of the Pennsylvania Supreme Court agreed that the Act applied in state cases, but held that in such cases exhaustion of internal remedies

5. He was removed, fined, and suspended, according to proper union procedure by action of his own local. On an internal union appeal his fine and suspension were revoked. His suit was for reinstatement. In the present case petitioner contends that he was unlawfully removed and prohibited from running for office thereafter, all in violation of the union constitution.

was still a prerequisite to suit. The Court gave its interpretation of the Act (p. 311):

> "Appellant cites two federal cases and some language contained in *Falsetti* v. *Local Union No. 2026, United Mine Workers of America*, 400 Pa. 145, 161 A. 2d 882, 87 A.L.R. 2d 1032 (1960) in support of his interpretation of Section 101(a) (4). The federal cases[9] involved suits brought in federal court under Section 102 of the Landrum Griffin Act[10] to remedy alleged violations of Title I of the Act. We read those decisions as merely adopting for the federal courts an exhaustion of remedies rule patterned upon the proviso clause in Section 101(a) (4). Those cases do not mean that state courts must also adopt this exhaustion rule."[6]

[9] Appellant cites *Harris* v. *International Longshoremen's Association, Local No. 1291*, 321 F. 2d 801 (3rd Cir., 1963) and *Detroy* v. *American Guild of Variety Artists*, 292 F. 2d 75 (2d Cir., 1961).

[10] Section 102 provides that suits for violations of Title I may be brought in a federal district court. 29 U.S.C.A. Sec. 412.

The dissent in the *Mamula* case disagreed (p. 312):

"I am also unable to share the majority's interpreta-

6. The majority interpreted these provisions of the Act (pp. 310-311): "We read Section 101(a) as a limitation upon labor organizations and not upon the judiciary. Prior to the passage of the Landrum-Griffin Act, many unions had provisions in their constitutions stating that any member who brought suit against the union without first exhausting all available internal remedies—no matter how burdensome or time-consuming—was subject to expulsion from membership.[6] Congress' purpose in enacting Section 101(a) (4) was to invalidate such provisions,[7] thereby protecting the union member from discipline for violation thereof, where insistence on exhaustion of remedies would be either (1) unreasonable or (2) exceed a four-month time period. Congress did not intend to alter state rules relating to exhaustion of remedies

[6] See Cox, Internal Affairs of Labor Unions Under the Labor Reform Act of 1959, 58 Mich. L. Rev. 819, 839 (1960).

[7] Section 101(b) of the Act states that "[a]ny provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect." 29 U.S.C.A. Sec. 411(b).

tion of Section 101(a) (4) of the Landrum-Griffin Act and the majority's failure to apply it to this litigation. This section obviously does not alter the established substantive rule of this Commonwealth which requires exhaustion of internal union remedies. It does, however, make it unmistakably clear that 'no labor organization' may delay the availability of such internal remedies for more than four months.

"If appeal to the International Convention be regarded as a 'remedy', as the majority holds, then clearly its availability fails to comply with the statute, since that hearing procedure was postponed more than four months."[7]

---

which, as we have seen, are designed to aid the courts as well as the unincorporated association. Thus while appellant could not be disciplined for bringing suit before appealing to the International Convention, the failure to exhaust this internal remedy still precludes resort to our courts.

"An examination of the language of Section 101(a)(4) plainly supports this interpretation. In the first place, the section states that '[n]o labor organization' shall limit the right of any member to institute suit or to take other remedial steps. There is no reference to existing judicial limitations on the ability of members of unincorporated associations to maintain action against the association. In this connection it should be remembered that the Landrum-Griffin Act was designed to promote union democracy by protecting the rights of a union member vis-a-vis his union. In fact, Title I, of which Section 101(a) (4) is a part, is labeled the 'Bill of Rights of Members of Labor Organizations' and sets forth various restrictions upon labor organizations.

"Secondly, the language relied upon by appellant appears in a parenthetical clause contained in a proviso to the restrictions imposed upon labor organizations. It is highly unlikely that Congress would attempt in such a cavalier manner to alter established state court rules relating to exhaustion of internal remedies."[8]

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[8] See Cox, Internal Affairs of Labor Unions Under the Labor Reform Act of 1959, 58 Mich. L. Rev. 819, 839 (1960): Hickey, The Bill of Rights of Union Members, 48 Geo. L. J. 226, 254 (1959); Smith, The Labor-Management Reporting and Disclosure Act of 1959, 46 Va. L. Rev. 195 (1960).

7. The dissent did not consider the international convention a true internal union remedy, a convention at which an appeal is presented before the same officers who have previously rejected it, and where the individual member has little opportunity to present his case to the membership itself, p. 311.

The present case raises the same question: do the provisions cited apply to give relief to individual union members who are denied the right to run for union office, but who file suit in state instead of federal courts. Summers, Pre-Emption and the Labor Reform Act, Dual Rights and Remedies, 70 Yale L. J. 110 (1961), at 137 states:

> "Under the Act, state courts were retained as a proper forum for suits prior to the election.
>
> • • • • •
>
> "When a state court gives a pre-election remedy for violation of the union constitution, it enforces federal substantive law which was created under the expressed purpose of Congress pursuant to Section 401."

The provisions of the Landrum-Griffin Act will only be effective if applied uniformly, throughout the courts, and whether suits are filed in state or federal courts. This is a question of national significance that has never been considered by this Court.

CONCLUSION.

This Court should grant review, reverse the proceedings below, and hold that the provisions of the Landrum-Griffin Act apply to protect the rights of individual union members to run for union office, in all cases, whether suit is filed in state or federal court.

Respectfully submitted,

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APPENDIX A.

49393

John W. McGinness,
Plaintiff-Appellant,
vs.
Charles Luna, President, Brotherhood of Railroad Trainmen, S. Vander Hei, Vice-President, Brotherhood of Railroad Trainmen, and T. D. Sharkey, Louis Smiraglia, and W. G. Zippman, President, Secretary, and Treasurer, respectively, of Local 225, Brotherhood of Railroad Trainmen,
Defendants-Appellees.

} Interlocutory Appeal from Superior Court, Cook County.

Mr. Presiding Justice Burke Delivered the Opinion of the Court:

Plaintiff is a member of Local 225, a subordinate Lodge of the Brotherhood of Railroad Trainmen, a labor organization. On October 9, 1963, he was nominated by members of the Local to run in the union election to be held on November 13, 1963, as legislative representative and also as delegate to the Brotherhood convention to be held in 1964. His nomination was accepted by the Lodge. In a letter dated October 14, 1963, the national president of the Brotherhood ordered the secretary of the Local to disregard plaintiff's nomination. He filed a complaint for an injunction restraining the defendants from preventing him from running for office in the Local and in the Brotherhood and a judgment for damages because of injuries to his reputation. He moved for a temporary injunction to enjoin the defendants from holding an election in the Local until

determination of his right to be a candidate on the local ballot. In his verified motion he set out that he would be irreparably denied his right as a union member if the election be held prior to the determination of his right to be on the ballot. He stated that a delay in holding the election would not harm the defendants or the union. He pointed out that since his name was not on the ballot there would be no contest in the election and no ballots would be sent out by the Local secretary. The motion of the Local officers and the national vice-president of the Brotherhood to dismiss the complaint for want of equity was denied without prejudice to defendants' right to raise the objections in their answer. Plaintiff appeals from the order denying his temporary injunction.

Plaintiff maintains that the Chancellor abused his discretion when he denied the motion for a temporary injunction. The plaintiff was charged with and found guilty of permitting the raising of dues without notice and without a secret ballot as required by the Landrum-Griffin Act as well as the union constitution and removed from his office of President of the Local and barred from holding office. An appeal by the plaintiff from the finding and order is pending before the national convention of the Brotherhood. The attorney for the defendants stated. during oral argument, that he understood that the convention would be held in October 1964. The complaint does not make any allegation of ultimate fact to bring plaintiff within any exception to the rule that a court of equity may not intervene until the remedies within the procedures of the union have been exhausted. By seeking a temporary mandatory injunction the plaintiff attempts to circumvent this rule. We think that the Chancellor exercised good judgment in denying the motion for a temporary injunction and that there was no abuse of discretion. The order is affirmed.

ORDER AFFIRMED.

FRIEND, *J.*, and BRYANT, *J.*, concur.

APPENDIX B.

Landrum-Griffin Act, 29 U. S. C. A. Supp.

SECTION 401. *Congressional declaration of findings, purposes, and policy.*

(a) The Congress finds that, in the public interest, it continues to be the responsibility of the Federal Government to protect employees' rights to organize, choose their own representatives. . . .

(b) The Congress further finds, from recent investigations in the labor and management fields, that there have been a number of instances of . . . disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives.

* * * * * *

SECTION 411. *Bill of rights; constitution and bylaws of labor organizations.*

(a) (1) *Equal rights.*—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

* * * * * *

(4) *Protection of the right to sue.*—No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: *Provided*, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof:

. . . .

• • • • •

SECTION 412. *Civil action for infringement of rights: jurisdiction.*

Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located.

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Respondents.

On Petition for a Writ of Certiorari to the Appellate Court of Illinois, First District

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BRIEF FOR RESPONDENTS IN OPPOSITION

OPINION BELOW

The opinion of the Illinois Appellate Court, Appendix A to the Petition, is reported at 46 Ill. App. 2d 43, 196 N. E. 2d 711.

JURISDICTION

The judgment appealed from affirmed the denial of a temporary injunction. Such a judgment is not final within the meaning of 28 U. S. C. A. 1257, the section of the Judicial Code relied upon by Petitioner.

QUESTIONS PRESENTED

1) Whether the denial of a Motion for a Temporary Injunction is a final judgment such as to invest this Court with jurisdiction.

2) Whether the Landrum-Griffin Act, 29 U. S. C. 411, et seq., is involved in a judgment which nowhere treats of that Act and that affirms the trial court on a state rule of pleading.

STATUTES

No statutes of the United States are involved in this case. The affirmance below is based solely upon a non-federal ground.

STATEMENT

This litigation concerns the attempt of Petitioner to obtain an injunction prohibiting an election for the office of legislative representative of his local union and also to prohibit an election for the office of a delegate of his local union to the convention of his international union. Before a hearing, Petitioner moved for a Temporary Injunction prohibiting the holding of elections for the said offices until the court held a final hearing on the merits of the Petitioner's Complaint. That Complaint sought a judgment declaring an Order of December 1, 1961 by the international president of

the union to be void and sought an injunction in aid of the judgment preventing Respondents from taking any action to prevent the Petitioner from running for office in his local union or in the international union in the future.

At the time of the hearing on the Motion for a Temporary Injunction, Respondents' Motion to Dismiss the Complaint for Want of Equity was also heard. The Chancellor denied the Motion for a Temporary Injunction and denied the Motion of Respondents with leave to the Respondents to raise the same matter in their Answer to the Complaint[1]

The Appellate Court affirmed the denial of a Temporary Injunction on the ground that the Complaint failed to make any allegation of ultimate fact to bring the plaintiff within any exception to the Illinois Rule that internal remedies must be exhausted before suit can be filed against a labor union. The Appellate Court did not decide any questions involving the Landrum-Griffin Act, none having been raised in the trial court.

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1. The Complaint, the Motion for a Temporary Injunction; the Motion to Dismiss the Complaint for Want of Equity, and the Orders dismissing both motions are contained in the Abstract of Record filed with the Petition herein.

REASONS FOR DENYING THE WRIT

I.

THIS COURT IS WITHOUT JURISDICTION BECAUSE THE DENIAL OF THE TEMPORARY INJUNCTION IS NOT A FINAL JUDGMENT.

Petitioner seeks to have this Court enter an injunction refused below to be effective only until a hearing on the merits can be had. The mere statement of this request demonstrates the non-final nature of the judgment.

Petitioner relies on Section 1257 of the Judicial Code, 62 Stat. 929 for jurisdiction. That section provides for a review by this Court of final judgments or decrees rendered by the highest court of the state in which a decision can be had. Petitioner nowhere considers the question of finality. Moreover, this Court has squarely held that a state court judgment affirming a temporary injunction was not final within the meaning of Section 1257 of the Judicial Code. *Montgomery Building & Construction Trades Council* v. *Ledbetter Erection Company*, 344 U. S. 178, 97 L. Ed. 204 (1952). This rule of finality is particularly appropriate here where the temporary injunction was refused. The only distinguishing of that case involves circumstances not present here. See *Local No. 438* v. *Curry*, 371 U. S. 542, 9 L. Ed. 2d 514 (1963) where this Court refused to follow *Ledbetter* because of a final and erroneous assertion of jurisdiction by a state court to issue a temporary injunction in a labor dispute.

This Court is without jurisdiction to review the instant judgment under the Judicial Code. The interlocutory nature of the judgment below is such that the dispute is not ripe for adjudication. Indeed, an Answer has been filed in

the instant suit since the Motion for a Temporary Injunction was denied and, under Illinois law, the cause may be tried on the merits despite the appeal from the denial of the temporary injunction. In these circumstances, no question is presented for review.

II.

THE JUDGMENT IS BASED SOLELY ON STATE LAW REQUIRING A PLEADING TAKING THE CASE OUT OF THE RULE REQUIRING AN EXHAUSTION OF INTERNAL REMEDIES.

Petitioner sought to bring the Landrum-Griffin Act into this case during oral argument before the Appellate Court. The Appellate Court, however, decided this case solely on state law. That court specifically states that Petitioner had failed to ". . . make any allegation of ultimate fact to bring him within any exception to the rule that a court of equity may not intervene until the remedies within the procedures of the union have been exhausted." (Appendix A to Petition). If Petitioner has any rights under the Landrum-Griffin Act, the simple way to assert those rights is to amend his complaint. (It is ironic to note Petitioner was prohibited from holding office in the union because he was found guilty of permitting the raising of dues without notice, and without a secret ballot as required by the Landrum-Griffin Act as well as the union constitution, Appendix A to Petition.)

It is said that Respondents would suffer no damage if the temporary injunction had been granted. This is obviously incorrect since the International Convention for the union will commence on September 28 and if the temporary injunction had been granted, the local union would be without a

delegate to the Convention. In addition, it would also be without a legislative representative.

Petitioner was barred from holding a union office on December 1, 1961. He chose to present an appeal to the International Convention of the union. No law suit was brought by the Petitioner until the eve of a local union election in November of 1963. The Complaint alleged only violation of alleged rights under the union constitution. Petitioner's Motion for a Temporary Injunction was denied and that denial was affirmed. Under Illinois law, the Petitioner was free to seek a trial on the merits while his appeal was pending. No action in that respect was taken by Petitioner. In such circumstances, this Court should not intervene.

CONCLUSION.

For the foregoing reasons, it is respectfully suggested that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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Respondents.

REPLY TO RESPONDENTS' ANSWER TO THE PETITION FOR A WRIT OF CERTIORARI.

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THE DUNTHORP-WARREN PRINTING COMPANY, CHICAGO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 432.

JOHN McGINNESS,

Petitioner,

vs.

CHARLES LUNA, PRESIDENT, BROTHERHOOD OF RAILROAD TRAINMEN, S. VANDER HEI, VICE-PRESIDENT, BROTHERHOOD OF RAILROAD TRAINMEN, AND T. D. SHARKEY, LOUIS SMIRAGLIA, AND W. G. ZIPPMAN, PRESIDENT, SECRETARY AND TREASURER, RESPECTIVELY, OF LOCAL 225, BROTHERHOOD OF RAILROAD TRAINMEN,

Respondents.

REPLY TO RESPONDENTS' ANSWER TO THE PETITION FOR A WRIT OF CERTIORARI.

Petitioner files this brief to correct the respondents' misstatement (R. Br. pp. 4-5) of this Court's appellate jurisdiction under 12 U. S. C. A. 1257, and to clarify respondents' misleading statement (R. Br. pp. 5-6) that union or state procedure provide any more than an illusory remedy for a union member denied the right to run for union office.

1. Under 28 U. S. C. A. 1257, as interpreted in *Local 438 v. Curry*, 1963, 371 U. S. 542, this Court has appellate

jurisdiction on an appeal from a state court decision granting or denying a temporary injunction, even if that appeal is interlocutory so that the merits on the ultimate issue are yet to be decided (p. 548), if the decision is the final determination available in the state court (p. 550), if the state court has decided a question that is to be determined under federal law (p. 549), and where *Montgomery Bldg. & Constr. Trades Council* v. *Ledbetter*, 1952, 344 U. S. 178, was in conflict with this holding (p. 552), it was overruled.

In the present case the order below is final under Illinois procedure. The order denying a temporary injunction was affirmed by the Appellate Court, and when the Illinois Supreme Court refused to exercise its power to grant review under Ch. 110, Sec. 101-32(1)(a), Ill. Rev. Stat. 1963, that order became final for review by this Court.

The Court below declined to apply the provisions of a federal statute. The Landrum-Griffin Act provides for judicial relief in union election cases when internal union procedure gives no actual remedy, or when union appellate steps will take over four months. Petitioner claims that he was duly nominated to run for union office and his name was unlawfully removed from the ballot. Because there was no actual appellate step available within the union, petitioner filed suit and asked to enjoin the election until his right to run for office was determined. This is the relief available under the federal Act, *Harvey* v. *Calhoon*, 2 Cir., 1963, 324 F. 2d 486, cert. granted 376 U. S. 910 (No. 17).[1]

1. The Solicitor General filed a memorandum *amicus curiae*, and took the position that the Act should not apply, contrary to Cox, Internal Affairs of Labor Unions under the Labor Reform Act of 1959, 58 Mich. L. Rev. 819 (1960); Hickey, The Bill of Rights of Union Members, 48 Geo. L. J. 226, 254 (1959); Smith, The Labor-Management Reporting and Disclosure Act of 1959, 46 Va. L. Rev. 195 (1960). In the memorandum the Solicitor suggests that all such cases should be determined by the Secretary of Labor, under Title IV of the Act (memorandum, p. 7). However,

This Court has appellate jurisdiction under 28 U. S. C. A. 1257 of a final order in a state court in an interlocutory appeal in this case where a question of federal law is raised.

2. As set out by respondents (R. Br. pp. 5-6), the Illinois court has held that no injunctive relief is available to petitioner until he has exhausted all internal union remedies. Petitioner agrees that a member of a labor union must follow union procedure, and that court action that is premature would not be proper. But in this case, respondents imply that by waiting for internal union appeals there is some effective remedy available to petitioner. This is misleading because the union's procedure and the Illinois Exhaustion Rule prevents any relief whatsoever.

Respondents point out (R. Br. p. 6) that the Illinois court has permitted petitioner to prosecute his suit on the merits, although the injunction was denied, and respondents implying that petitioner could find a remedy in that proceeding. This is also misleading, and it is anomalous. A hearing on the merits without the injunction is ineffective, see *Local 438* v. *Curry*, 1963, 371 U. S. 542 cited above, at pp. 549-550. And it is anomalous for the court to say petitioner has standing to sue on the merits, before internal procedure is exhausted, but that he cannot have injunctive relief only because he has not exhausted those internal union remedies. By the holding below the Illinois court has sanctioned union procedure that denies to a rank and file member the right to run for union office. This is the kind of union procedure, made up of illusory rights, that caused

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in the present case that remedy is even more illusory than the Illinois Exhaustion Rule. The Secretary of Labor (Supplement to this brief) has taken the position that he will not investigate the election where petitioner was removed from the ballot, and refused the right to run as a delegate to the union convention, but will only act after the delegates have performed their functions at that convention, a position that raises the old adage about the barn door and the horse.

Congress to adopt a "Bill of Rights'" in the Landrum-Griffin Act.

Petitioner asks this Court to grant review, to apply the provisions of the Landrum-Griffin Act so as to permit judicial relief where a union member is denied the right to run for office, and to hold that this relief is available in suits brought in state courts.

Respectfully submitted,

MARSHALL PATNER,
135 South La Salle Street,
Chicago, Illinois,
Attorney for Petitioner.

SUPPLEMENT.

U. S. DEPARTMENT OF LABOR
Office of the Secretary
Washington

Mar. 9, 1964

Mr. Marshall Patner,
Dixon, Todhunter, Knouff & Holmes,
The First National Bank Building,
Chicago, Illinois 60603.

DEAR MR. PATNER:

Reference is made to your letters of February 13 and 14, 1964, concerning the complaint of your client, Mr. John W. McGinness.

A review of Mr. McGinness' letter reveals that he was a candidate for the position of delegate to the National Convention of the Brotherhood of Railroad Trainmen to be held on September 28, 1964.

The provisions of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) do not apply to the election by members of a labor organization of its delegates to national or international conventions except when an election of officers of the national or international labor organization is to be held at such a convention.

Inasmuch as the officers of the Brotherhood of Railroad Trainmen are to be elected at its September 1964 Convention, the requirements of Section 401(e), LMRDA, as to safeguards and procedures would have to be observed and any violations would be subject to the enforcement action provided in Section 402. However, it is the policy of the

Department not to conduct an investigation of a delegate election until the delegates have performed their function of voting for the officers.

In consequence of our position, the complaint of your client, Mr. McGinness, cannot be accepted until the election of the officers has occurred.

Yours sincerely,

W. WILLARD WIRTZ,
Secretary of Labor.